

FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: February 15, 2018

Agenda Item: Big Creek Instream Flow Water Right Lease Renewal (R3)

Division: Fisheries

Action Needed: Endorsement

Time Needed on Agenda for this Presentation: 5 Min

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Background. FWP has leased water for instream flow in Big Creek, a tributary to the Yellowstone River near Emigrant from several water right owners since 1999. The lease with two of the owners was renewed in 2009 as its original term was only 10 years. The other lease has an original term of 20 years. The water leases and the associated temporary changes to instream flow will expired after the 2019 irrigation season and it is now time to begin negotiations to renew the water leases.

The current leases total a range of flows from 11 to 27 cfs with a 11 cfs minimum that is enforced against junior water rights. The purpose of the leases is to maintain flow in the lower 1¼ mile of Big Creek. The water leased for instream flow was created when the water right owners converted from flood to sprinkler irrigation at the time the original leases went into effect. Like other upper Yellowstone River tributaries, the focus of this water lease is to protect flow in Big Creek to provide for the successful spawning, incubation, emergence and outmigration to the Yellowstone River of Yellowstone cutthroat trout.

One lessor desires to reconfigure their water rights including one water right presently leased by FWP. This may require the negotiation of a new water lease with that water right owner that conforms to the changes to their water rights. The outcome is expected to preserve the status quo or something very close with respect to protected instream flow.

Public Involvement Process & Results. At the time of the original changes to instream flow in 1999, potentially affected parties had the opportunity to object to the change to instream flow. Also, during the 2009 lease renewal parties were given the opportunity to object. As part of the lease renewal or new change to instream flow process, DNRC would notify other water users and allow them the opportunity to object. In addition, the water-right lease agreements will be subject to final Commission approval.

Alternatives and Analysis. The No Action alternative would be for FWP to not continue to lease the water rights resulting in significantly lower Yellowstone cutthroat fry production from Big Creek. Another alternative would be for the water right to temporarily change the water right to instream flow without the involvement of FWP. This alternative would require them to incur the legal and technical cost of pursuing a new change to instream flow. The owners may well choose not to pursue a new change to instream flow for the benefit of the public fishery without FWP assistance.

Agency Recommendation & Rationale

FWP recommends that the Commission direct FWP Staff to negotiate water-right lease renewal agreements and anew water-right lease agreement to continue the protection of instream flow in Big Creek.

Proposed Motion

I move that the Fish and Wildlife Commission authorize FWP staff to negotiate water-right lease renewal agreements and new water-right lease agreement for irrigation water rights from Big Creek to continue the protection of instream flow, subject to final approval by the Commission.